

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2327 of 1995

CIVIL APPLICATION NO. 2952 of 1995

A N D

APPLICATION NO. (UNNUMBERED) FILED ON 11.09.1995

AS ADDITIONAL AFFIDAVIT BY VIKRAMSINH N. CHAVADA

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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CHANCHALBEN B PATEL

Versus

MUNICIPAL CORP OF AHMEDABAD

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Appearance:

MR MB GANDHI for Appellants

MR PRASHANT G DESAI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 21/09/96

ORAL JUDGEMENT

1. Admitted. Mr. Prashant G. Desai for the respondent Corporation has waived service of notice of admission. Printing of paper book is dispensed with even at the admissional stage. The matter was argued for

final hearing, but, through omission, the order of admission was not passed. The learned Counsel appearing for both the parties have agreed that this First Appeal be treated as already admitted and that it should be decided finally on merits.

2. This First Appeal is directed against the judgment and decree passed by the learned City Civil Judge dated 24th April, 1995, whereby Civil Suit No. 2060 of 1985 filed by appellants - plaintiffs came to be dismissed with cost and decree was accordingly passed. The main dispute in the suit between the appellants - plaintiffs and respondent Corporation related to 100 square meters of land being Survey No. 464 for the purpose of road widening and question as to whether the plaintiffs were in occupation thereof by putting up illegal construction and secondly as to whether in view of the implementation of the road line at least with respect to that unauthorised construction, Corporation was justified in either demolishing or calling upon the plaintiffs to remove such unauthorised construction. The plaintiffs agitated various grievances and contentions, legal as well as factual before the City Civil Court. The respondent defendant appeared and filed written statement and based thereon issues were framed at Exhibit 22.

3. It appears that thereafter oral evidence of the parties was recorded and documentary evidence was also produced. After appreciating the evidence, oral as well as documentary, the trial court recorded its finding on issues at Exhibit 22 and ultimately came to the conclusion that the appellants - plaintiffs were not entitled to the declaration and injunction as prayed for and that therefore the suit was dismissed.

4. Being aggrieved thereby the appellants plaintiffs are before this Court and in Civil Application No. 2952 of 1995, the learned Single Judge has while issuing notice on the main Appeal, granted the ad interim relief to the effect that the order of the trial court will not operate till 25th of July, 1995. It appears that even in absence of further order thereafter, the status quo as regards unauthorised kaccha construction of shed put up by plaintiffs within 80 feet and which according to appellants - plaintiffs was on a margin land, was, in fact not demolished, by the Corporation out of due deference to the earlier order passed by the learned Single Judge.

5. At the hearing of this First Appeal, Mr. M.B.

Gandhi, learned Counsel appearing for the appellants - plaintiffs, with usual vigour and vehemence, raised number of contentions and matter was argued at length before this Court and was thereafter ordered to be treated as part heard since this Court has invested much time in hearing the matter.

6. It appears that thereafter the appellants plaintiffs have filed the aforesaid additional affidavit in the month of September, 1995 and along with such additional affidavit, they have produced number of documents to buttress their submissions. To such additional affidavit, affidavit-in-reply is also filed by Harshadbhai Mistry, Assistant Estate Officer of Ahmedabad Municipal Corporation. In such affidavit-in-reply, the Corporation has clearly stated that in fact when the Corporation went to take possession of the land, there was no construction and that the alleged construction was outside the roadline of 80 feet and that the appellants - plaintiffs have constructed kuccha shed within 80 feet portion. The said construction was unauthorised on a margin land.

7. So far as the aforesaid assertions made in the affidavit-in-reply of Harshadbhai Mistry are concerned, appellants - plaintiffs have no other alternative but to admit the same and they stated that their unauthorised kuccha construction is on the present existing 80 feet road line and that it can be said to be causing obstruction. They also stated before the Court that if such unauthorised construction which is in the nature of shed, is demolished or removed, they have no objection or that the Corporation can also demolish or remove the same. In view of the aforesaid stand which clearly emerges from the additional affidavit of appellants plaintiffs and affidavit-in-reply of the Assistant Estate Officer of the Respondent Corporation, in the opinion of this Court, the trial court was justified in refusing the decree of declaration and injunction and in permitting the respondent Corporation to remove the unauthorised construction. In view of the above, no interference in the findings of law and facts reached by the trial court is called for and judgment and decree passed by the trial court is required to be confirmed.

7. However, Mr. M.B. Gandhi, learned counsel appearing for the appellants - plaintiffs submitted that they have got one shop which is in the development plan and which is adjacent to this unauthorised kuccha shed but the same shop is on the balance portion of 20 feet in the development plan which is yet not implemented. It is

not disputed that in the year 1983, development plan came to be passed and in the said development plan, the road of 100 feet is proposed in place of 80 feet road in the development plan road line. The Corporation has not implemented the said 100 feet road so far but has implemented the 80 feet road and the unauthorised construction put up by the appellants - plaintiffs being on such 80 feet sanctioned road, the same is liable to be removed. In view of the aforesaid, Mr. M.B. Gandhi urged before this Court that the respondent - Corporation cannot be permitted to demolish such shop without following process of law.

8. In my opinion, the contentions which were specifically raised in the pleadings before the trial court and the issues which were raised by the trial court, were answered by the trial court against the appellants plaintiffs after recording oral as well as documental evidence and the said findings of fact and law recorded by the trial court cannot be said to be in any way erroneous, perverse or unreasonable or calling for upsetting of such finding by this Court. Such findings of fact and law reached by the trial court and the ultimate decree of dismissal of the suit filed by the appellants - plaintiffs by the trial court are therefore required to be confirmed. Mr. M.B. Gandhi, learned counsel appearing for the appellants tried to raise various technical issues about the right of the Corporation to evict persons from the road line without following due process of law. None of the provisions of law or the resolutions which are relied upon by him help him and in fact run counter to his submission.

9. However, this judgment and decree is passed by this Court, without prejudice to the rights and contentions which the appellants - plaintiffs may raise with respect to the aforesaid shop situated on 20 feet road which is yet to be implemented by the Corporation. Subject to the rider that the judgment and decree passed by the City Civil Court dated 24th April, 1995 and confirmed in this Appeal by this Court shall operate as res judicata between the parties and contentions raised in such proceeding shall not be permitted to be reagitated in the proceeding, if any, to which the appellants - plaintiffs may resort to in future. It is also agreed before the court that since the issues which are directly and substantially involved in this suit and which are decided by this Court by its final judgment and decree, the findings thereon shall bind the plaintiffs or parties under whom there any of them calim, litigating under the same title in a court competent to try such

subsequent suit or the suits in which such issue has been subsequently raised. Once again it is clarified that this also would not affect the rights and contentions of the Corporation to contest any proceeding if filed by the appellants - plaintiffs in future with respect to the shop on the 20 feet portion which is though declared to be roadline in the development plan but which is yet not implemented.

10. It is also required to be stated that Mr. M.B. Gandhi, learned counsel appearing for the appellants plaintiffs has sought permission of this Court not to press his additional affidavit filed on 11th September, 1995 and on documents produced therein. However, since this Court has referred to such additional affidavit as well as affidavit-in-reply of respondent Corporation while disposing of this First Appeal, I asked Mr. M.B. Gandhi to state that he has no objection to the facts already referred to and reproduced by the Court by such additional affidavit or affidavit-in-reply being referred to and relied upon. the aforesaid clarification, this Court permits Mr. M.B. Gandhi to withdraw that additional affidavit filed on 11th September, 1995 which would also necessarily result into affidavit-in-reply, affidavit-in-rejoinder and affidavit-in surrejoinder of the Corporation not being pressed for opposing that additional affidavit.

11. In the result, the First Appeal No. 2327 of 1995 fails and the same is dismissed. There shall be no order as to costs.

12. No order on Civil Application and the order of stay which was to operate partially is vacated hereby. Time to remove such unauthorised construction is granted to the appellants - plaintiffs for four weeks from today. C.A. stands disposed of accordingly. Notice is discharged. No costs.

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